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September 9, 1992

Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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SEP - 9 1992

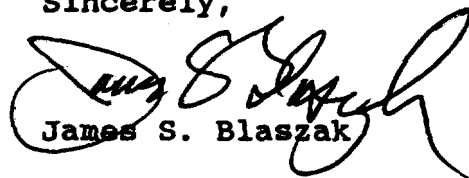
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex parte contact in CC Docket No. 92-90

Dear Secretary Searcy:

The attached written ex parte contact was made today on behalf of the American Express Company.

Sincerely,

  
James S. Blaszak

JSB/jas  
Attachment

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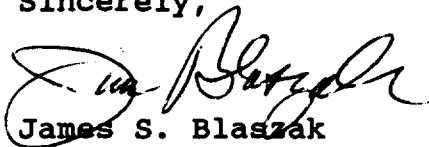
September 9, 1992

Charla M. Rath  
Special Assistant  
Office of the Chairman  
Federal Communications Commission  
Room 814  
Washington, D.C. 20554

Dear Ms. Rath:

On behalf of myself and Laurel Kamen, thank you for meeting with us last week to discuss the views of IDS Financial Services on issues raised in the Commission's telemarketing docket (CC Docket No. 92-90). During our meeting I referred to telephone solicitation legislation that has been enacted in Texas, and said that the legislation gives companies subject to it flexibility to use "reasonable measures" for developing company maintained do not call list. You will see from examining Section 119 of the enclosed Texas Senate bill that companies subject to that legislation are directed to, "implement in-house systems and procedures so that every effort is made not to call consumers who asked not to be called again." Obviously, the state of Texas has opted to give companies substantial flexibility in implementing in-house do not call lists and systems.

Sincerely,



James S. Blaszk

JSB/jsb  
Enclosure

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ENROLLED

S.B. No. 1169

AN ACT

1 relating to the regulation of consumer telephone calls; providing  
2 civil penalties and injunctive relief.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Title 4, Business & Commerce Code, is amended by  
5 adding Chapter 37 to read as follows:

6 CHAPTER 37. TELEPHONE SOLICITATION

7 Sec. 37.01. DEFINITIONS. In this chapter:

8 (1) "Automated dialing announcing device" means  
9 automated equipment used for telephone solicitation or collection  
10 that is capable:

11 (A) of storing telephone numbers to be called or  
12 has a random or sequential number generator capable of producing  
13 numbers to be called; and

14 (B) alone or in conjunction with other  
15 equipment, of conveying a prerecorded or synthesized voice message  
16 to the number called without the use of a live operator.

17 (2) "Consumer" means a person who is solicited to  
18 purchase, lease, or receive a consumer good or service.

19 (3) "Consumer good or service" means:

20 (A) real property or tangible or intangible  
21 personal property that is normally used for personal, family, or  
22 household purposes, including personal property intended to be  
23 attached to or installed in any real property;

- 1                   (B) a cemetery lot;  
2                   (C) a time-share estate; and  
3                   (D) a service related to real or personal  
4   property.

5                   (4) "Consumer telephone call" means an unsolicited  
6   call made to a residential telephone number by a telephone  
7   solicitor to:

8                   (A) solicit a sale of a consumer good or  
9   service;

10                   (B) solicit an extension of credit for a  
11   consumer good or service; or

12                   (C) obtain information that will or may be used  
13   to directly solicit a sale of a consumer good or service or to  
14   extend credit for the sale.

15                   (5) "Telephone solicitor" means a person who makes or  
16   causes to be made a consumer telephone call, including a call made  
17   by an automated dialing device.

18                   Sec. 37.02. SOLICITOR IDENTITY; PERMISSIBLE HOURS;  
19   DISCONNECT. (a) A telephone solicitor may not make a consumer  
20   telephone call to a consumer unless:

21                   (1) the telephone solicitor identifies himself or  
22   herself by name and identifies the business on whose behalf the  
23   telephone solicitor is calling and the purpose of the call  
24   immediately after making contact with the consumer to whom the call  
25   is made;

1           (2) the telephone solicitor makes the call after 12  
2 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m.  
3 on a weekday or a Saturday; and

4           (3) for those calls in which an automated dial  
5 announcing device is used, where technically possible, the device  
6 must disconnect the consumer's telephone line within 30 seconds  
7 after termination of the call by either the telephone solicitor or  
8 the consumer.

9           (b) A consumer telephone call is not subject to the  
10 provisions of Subsection (a) of this section if the call is made:

11           (1) in response to the express request of the  
12 consumer;

13           (2) primarily in connection with an existing debt or  
14 contract for which payment or performance has not been completed at  
15 the time of the call; or

16           (3) to a consumer with whom the telephone solicitor  
17 has a prior or existing business relationship.

18           Sec. 37.03. CHARGES TO CONSUMER CREDIT ACCOUNT. A person  
19 who sells consumer goods and services through the use of a  
20 telephone solicitor may not make or submit a charge to a consumer's  
21 credit card account unless:

22           (1) the seller provides that the consumer may receive  
23 a full refund for the return of undamaged and unused goods or a  
24 cancellation of services by providing notice to the seller not  
25 later than the seventh day after the date the consumer receives the

1 goods or services and in which the seller will process;

2 (A) a refund not later than the 30th day after  
3 the date the seller receives the returned merchandise from the  
4 consumer;

5 (B) a full refund not later than the 30th day  
6 after the purchaser of services cancels an order for the purchase  
7 of services not performed or a pro rata refund for any services not  
8 yet performed for the consumer;

9 (2) the seller provides to the consumer a written  
10 contract fully describing the goods or services being offered, the  
11 total price to be charged, the name, address, and business phone of  
12 the seller, and any terms or conditions affecting the sale and  
13 receives from the consumer a signed copy of such contract; or

14 (3) the seller is an organization that qualifies for  
15 and has obtained an exemption from federal income tax from the  
16 Internal Revenue Service under Section 501(c)(3), Internal Revenue  
17 Code of 1986 (26 U.S.C. Section 501(c)(3)).

18 Sec. 37.04. ENFORCEMENT. (a) The attorney general's office  
19 shall investigate a complaint relating to a violation of this  
20 chapter and may petition a district court for a temporary  
21 restraining order to restrain a continuing violation of this  
22 chapter and for the assessment of a civil penalty as provided by  
23 Section 37.05 of this code.

24 (b) A district court, on petition of the attorney general's  
25 office and on a finding by the court that a person is violating

1 this chapter may, by injunction, prohibit a person from continuing  
2 a violation of this chapter or grant any other injunctive relief  
3 warranted by the facts.

4 (c) Venue for a suit brought under this chapter is in:

5 (1) the county in which the consumer telephone call  
6 originated;

7 (2) the county in which the consumer telephone call  
8 was received; or

9 (3) Travis County.

10 Sec. 37.05. CIVIL PENALTY. (a) A person who knowingly  
11 violates this chapter is liable for a civil penalty of not more  
12 than \$10,000 for each violation.

13 (b) In addition to bringing an action for injunctive relief,  
14 the attorney general may also seek restitution and civil penalties  
15 as provided herein.

16 (c) A consumer injured by a violation of this chapter may  
17 bring any action for recovery of damages. The damages awarded may  
18 not be less than the amount paid by the buyer to the telephone  
19 solicitor, plus reasonable attorney fees and court costs.

20 SECTION 2. Article XIV, The Public Utility Regulatory Act  
21 (Article 1446, Vernon's Texas Civil Statutes), is amended by adding  
22 Sections 119 and 120 to read as follows:

23 Sec. 119. Every telephone solicitor operating in this state  
24 who makes consumer telephone calls subject to Section 37.02 of the  
25 Business & Commerce Code shall implement in-house systems and

1 procedures so that every effort is made not to call consumers who  
2 ask not to be called again. The commission is granted all  
3 necessary power and authority to enforce the provisions of this  
4 section.

5 Sec. 120. The commission by rule shall require that a local  
6 exchange telephone company or telephone cooperative inform its  
7 customers of the provisions of Chapter 37 of the Business &  
8 Commerce Code and Section 119 of this Act by:

9 (1) inserting the notice annually in the billing  
10 statement mailed to a customer; or

11 (2) publishing the notice in the consumer information  
12 pages of its local telephone directory.

13 SECTION 3. This Act takes effect January 1, 1992.

14 SECTION 4. The importance of this legislation and the  
15 crowded condition of the calendars in both houses create an  
16 emergency and an imperative public necessity that the  
17 constitutional rule requiring bills to be read on three several  
18 days in each house be suspended, and this rule is hereby suspended.